

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**SECURITY PLAN FIRE INSURANCE COMPANY  
Petitioner**

**VERSUS**

**BTA DOCKET NO. 9069**

**JAMES L. DONELON (JAMES J. DONELON)  
COMMISSIONER OF INSURANCE,  
DEPARTMENT OF INSURANCE,  
STATE OF LOUISIANA**

**Respondent**

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**JUDGMENT**

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A hearing was held on August 13, 2015 on the State Department of Insurance, Commissioner of Insurance's ("Commissioner") Exceptions of Lack of Subject Matter Jurisdiction and Failure to Join Parties Needed for Just Adjudication, with Judge Tony Graphia (ret.), Chairman and Vice-Chairman Cade R. Cole present; Board Member Kernan A. Hand, Jr. was absent. Present before the Board were: John D. Ryland, attorney for the Commissioner, and Gregory E. Bodin, attorney for Security Plan Fire Insurance Company ("Petitioner"). After the hearing, the matter was taken under advisement.

The Petitioner has appealed to the Board requesting that it order the return from the Commissioner the amount of \$134,483.57 that it paid to the Commissioner for Louisiana Insurance Rating assessments for 2012, 2013 and 2014.

The Commissioner has filed exceptions of Lack of Subject Matter Jurisdiction and Failure to Join Parties Needed for Just Adjudication.

The question for the Board is whether it has the jurisdiction to order the Commissioner to make the requested refund. If the Board has no jurisdiction, then the exception of Failure to Join Parties Needed for Just Adjudication is moot.

The jurisdiction of the Board is found in R.S. 47:1407, which states in pertinent part:

"1407. Jurisdiction of the board

The jurisdiction of the board shall extend to the following:

(1) All matters relating to appeals...for the determination of over payments, as provided by in R.S. 47:1431 through 47:1438..."

The relevant part of R.S. 47:1431 states:

“Whenever a taxpayer is aggrieved by ... the collector’s action or failure to act on a claim for refund or credit of an overpayment, such taxpayer may appeal to the board for a redetermination...of the alleged over payment...”

In R.S. 47:1501, which provides definitions for Title 47, the law states that:

“A. The terms ‘collector’, ‘collector of revenue’, ‘secretary’ or ‘secretary of revenue’, when used in this Title means the secretary of the Department of Revenue for the state of Louisiana...”

The Board finds that the Commissioner of Insurance, is not the “collector” defined in R.S. 47:1431 and referred to in R.S. 47: 1431 or otherwise referred to in Part V of Title 47, which Part deals with refunds.

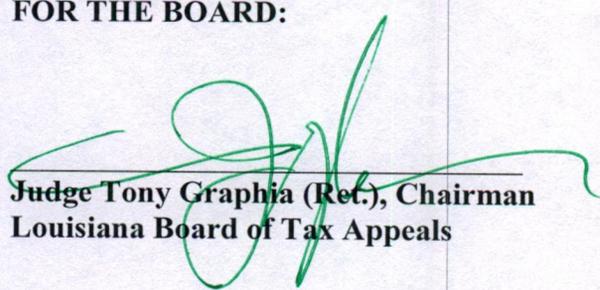
In addition, the Board only has jurisdiction to hear appeals from the collector’s disallowance of refund claim as provided by R.S.47:1625, or if there has been one year of inaction by the collector. The claim for refund in this matter has not been presented to or denied by the collector.

As explained above, the Board finds that it does not have jurisdiction in this matter.

It is ORDERED, ADJUDGED and DECREED that the Exception of Lack of Subject Matter Jurisdiction of the Commissioner of Insurance BE AND IS HEREBY SUSTAINED, and the petition of Security Plan Fire Insurance Company IS HEREBY DISMISSED.

Baton Rouge, Louisiana, this 14<sup>th</sup> day of January, 2016.

**FOR THE BOARD:**



**Judge Tony Graphia (Ret.), Chairman  
Louisiana Board of Tax Appeals**

**Vice-Chairman Cole concurs in this Judgment and assigns written reasons**

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**WRITTEN REASONS FOR CONCURRENCE**

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**Vice-Chairman Cole**, concurring, assigns additional reasons.

I agree with the Board's Judgment sustaining this exception, but write separately to address the unique facts of this case. In the present case, the Commissioner issued a written notice to the taxpayer instructing them that they had a 60 day right to appeal to the Board of Tax Appeals. This was apparently the routine practice of the Commissioner. The language mirrors the language used on tax assessments by the state's other tax collectors (the Department of Revenue, Office of Motor Vehicles, or Alcohol and Tobacco Control). The Board was given specific statutory authority to hear appeals from those agencies, but there is no specific grant of authority related to the Commissioner. Although the Petitioner did exactly what it was instructed to do by the Commissioner, no party cannot stipulate or create subject matter jurisdiction.

There is a significant gap in the law in the Insurance Code, there are no provisions for 'tax procedure' related to the hundreds of millions of dollars of taxes imposed by that Title and collected by the Commissioner. The lack of any procedural provisions or appeal process is troublesome, and suggests a real need for legislative action in the upcoming session. *Contrast Op. Atty. Gen. 14-0073, p.2* (discussing cases which find that legislation is required to create a cause of action for refund) with the mandate of La. Const. art. VII, sec. 3.

The Board also possesses a broad grant of jurisdiction under the 'claims against the state' procedure. Part V of Chapter 17 of Title 47 of the La. Revised Statutes of 1950, as amended.

The First Circuit has stated that, "the foregoing section [R.S. 47:1481] was intended to give the Board of Tax Appeals the authority to grant claims for taxes erroneously paid to the state, when principles of justice and equity so require, even though a refund might not otherwise be permitted

by law.” *Sperry Rand Corp. v. Collector of Revenue*, 376 So. 2d 505, 507 (La. App. 1 Cir. 1979). However, the current petitioner has not pled a cause of action pursuant to R.S. 47:1481, and that Section may prove to be an inadequate remedy considering the unique facts of this case.

I agree that we do not have jurisdiction to grant the relief requested by the taxpayer’s petition as it is presently before the Board. I therefore concur in the Board’s Judgment sustaining the pending exception.

Baton Rouge, Louisiana, this 14<sup>th</sup> day of January, 2016.



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**Cade R. Cole, Vice-Chairman**  
**Louisiana Board of Tax Appeals**